



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2005

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
Legal Services  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2005-10553

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 236746.

The City of Waco (the "city") received a request for information maintained by the city's police and fire departments pertaining to a specified address. You state that some requested information will be made available to the requestor but claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your claim that some of the information contained in the documents submitted as Exhibit 7 are subject to section 552.101 of the Government Code. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. Gov't Code § 552.101. Access to emergency medical service ("EMS") records is governed by the provisions of the Emergency Medical Services Act, Health and Safety Code sections 773.091 through 773.173. *See* Open Records Decision No. 598 (1991). Section 773.091(b) provides as follows:

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b). This confidentiality provision “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. *Id.* § 773.091(g). Upon review, however, we find that none of the information submitted as Exhibit 7 constitutes EMS records. Thus, none of this information may be withheld under section 552.101 of the Government Code on the basis of section 773.091(b) of the Health and Safety Code. Accordingly, the city must release this information.

Next, you seek to withhold Exhibits 4 and 5 under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that this information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of Exhibits 4 and 5 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, the city may withhold Exhibits 4 and 5 from disclosure based on section 552.108(a)(1). We note that the city has the discretion to release all or part of this information that is not otherwise confidential by law. Gov’t Code § 552.007. The basic information in Exhibits 4 and 5, as well as the remaining information at issue, must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

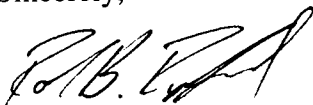
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 236746

Enc. Submitted documents

c: Mr. Dudley G. Jordan  
Campbell, Cherry, Harrison, Davis & Dove, P.C.  
P. O. Drawer 21387  
Waco, Texas 76702-1387  
(w/o enclosures)